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375, 2 L. R. A. 142. The relation of the police power of the State to the constitutional guarantee of freedom of worship is admirably stated by Chief Justice Waite in *Reynolds v. United States*, *supra*, as follows: "The precise point of inquiry is, what is the religious freedom which is guaranteed? Congress was deprived of all legislative power over mere opinion, but was left free to reach acts which were in violation of social duties or subversive of good order. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the government could not interfere to prevent such a sacrifice? To permit this would be to make the professed doctrines of religious belief superior to the laws of the land and in effect to make every citizen a law unto himself. Government could exist only in name under such circumstances."

LOCAL TAXATION OF INTERSTATE COMMERCE.

In the decision in *Atlantic and Pacific Tel. Co. v. City of Philadelphia*, decided June 1, 1903, the Supreme Court has restated a new principle (laid down for the first time in *Western Union v. New Hope*, 187 U. S. 419, decided January 5, 1903) in respect to the extremely difficult and important question of the extent of the power of a local governmental body to tax a corporation engaged in interstate commerce. The case arose upon the attempt of the city of Philadelphia to enforce the payment of license charges imposed upon the telegraph company by a city ordinance, which charges were intended to reimburse the city for sums expended in the enforcement of local governmental supervision of the telegraph poles and wires. Judgment in the lower court being rendered in favor of the city, the company carried the case up on the ground that the ordinance, though purporting to be merely a police regulation, was in reality an unconstitutional regulation of interstate commerce.

Justice Brewer begins his opinion by saying that certain propositions have been adjudicated so often as to be no longer open to discussion: First—Congress has exclusive power to regulate interstate commerce. Second—No State or sub-division thereof can compel a person or corporation to pay for the privilege of engaging in interstate commerce. Third—This immunity does not prevent a State from imposing ordinary property taxes upon property having a situs within its territory, and employed in interstate commerce. Fourth—The franchise of a corporation, although that franchise is the business of interstate commerce, is, as a part of its property, subject to State taxation, providing, at least, the franchise is not derived from the United States. Fifth—No corporation, even though engaged in interstate commerce, can appropriate property without liability to charge therefor.

He then goes on to lay down the further proposition, based upon the ruling in *Tel. Co. v. New Hope*, *supra*, that if a corporation, although engaged in interstate commerce, so carries on its business as to justify police supervision at the hands of a municipality, the

municipality is not bound to furnish such supervision for nothing, but may, in addition to ordinary property taxation, require the corporation to pay a reasonable license fee to cover the expense of the supervision.

In *Tel. Co. v. New Hope*, *supra*, the question of the validity of such an ordinance as that in question here, came before the court for the first time, and in his opinion Fuller, C. J., said: "This license fee was not a tax on the property of the company, or on its transmission of messages, or on its receipts from such transmission, or on its occupation or business, but was a charge in the enforcement of local governmental supervision, and, as such, not in itself obnoxious to the clause of the constitution relied upon." This ruling seems to us to be marked by good common sense, and to indicate in its manner of application, as set forth by the court, a careful desire to do justice, both to the inhabitants of the municipality and the members of the corporation. If, on the one hand, a certain amount of police supervision is necessary to protect the public from the danger of falling poles and wires, we see no reason why the police itself should be put to the expense of providing this supervision merely because the telegraph company happens to carry on business within two different States instead of being confined entirely within the limits of one. On the other hand, it is the duty of the courts to see to it that the charges are reasonable and not out of all proportion to the work required, nor unduly burdensome to the company. Having laid down the fundamental proposition, that a reasonable license fee is constitutional, Justice Brewer goes on to discuss the question of reasonableness.

The extent of the expense to which the municipality is put in exercising its supervision is the test of the reasonableness of the license charge. But it is not within the power of the court to declare dogmatically what shall be the limit of expense. That is a proper question for a jury. When it is said by courts and authors that the question of the reasonableness of a regulation is for the courts to decide, it is meant by that merely that such is the case where the question depends on the *character* of the regulation. When the court has decided that a regulation imposing a charge is of a proper character it becomes the duty of the jury to decide from the facts of the particular case whether or not the amount of the charge is unduly large; and in this way the *jury* passes on the question of reasonableness.

In *Tel. Co. v. New Hope*, *supra*, when the decision of the question of reasonableness was held to be rightly left to the jury, White, Peckham, and McKenna, J. J., "dissented from the judgment." In the present case, when the judgment of the lower court was reversed because the court improperly took upon itself the decision of that question, the learned justices "concurred in the judgment." As none of them has declared the grounds for his action, it seems impossible to tell whether they deny the validity of the fundamental proposition that a city may impose a license fee of the character in

question, or of the secondary proposition, that the reasonableness of such a fee is a question for the jury. It is to be regretted that upon such an important question the exact position of the court should not be clearly defined.

FEDERAL SUCCESSION TAX ON BEQUESTS TO MUNICIPALITY.

The theory of the succession tax has been thoroughly considered in a number of cases. In *United States v. Perkins*, 163 U. S. 625, it was decided that a State inheritance tax was a limitation upon the power of a testator to bequeath his property. Upon this theory it was held in *Plummer v. Coler*, 178 U. S. 115, that a State might impose a succession tax upon property composed wholly or in part of Federal securities, since the tax is not upon the property itself.

But though the authority of the States to regulate the right of succession is conceded, it was seriously questioned whether the United States had power also to impose a succession tax. In *Knowlton v. Moore*, 178 U. S. 41, it was established that "the power to tax inheritances does not arise solely from the power to regulate the descent of property, but from the general authority to impose taxes upon all property within the jurisdiction of the taxing power." The right of the United States to impose a succession tax having been established, a new question has arisen as to whether this tax might be imposed on a bequest to a municipality, as being a tax upon an agency of the State. From the conclusions reached in *Knowlton v. Moore*, *supra*, it would seem that the nature of an inheritance tax as imposed by the United States is a tax upon the property itself, while an inheritance tax by a State is broader, being derived not only from the power to tax the property itself, but also from the power to tax the right to bequeath property. Upon this theory it would appear that a succession tax by the United States upon a bequest to a municipality would be unconstitutional as a burden upon an agency of the State. *Snyder v. Bettman*, 23 Sup. Ct. Rep. 803, holds, however, that a tax on such a bequest is valid since it is collected from the property while in the hands of the executor, before payment to the legatees. The court supports its position by the argument that since a State may tax a bequest to the United States, as held in *Plummer v. Coler*, *supra*, therefore, the United States may tax a bequest to a State, or its agency, not recognizing, it would seem, the distinction drawn in *Knowlton v. Moore*, as to the difference between the tax when levied by a State, and when levied by the United States.

PROPERTY RIGHT IN ONE'S NAME AND PICTURE.

By a law which went into effect September 1, the New York Legislature has sought to nullify the effect of the decision of the Court of Appeals in *Roberson v. Rochester Folding Box Co.*, 171 N. Y. 538, where it was held that no injunction to restrain the unauthorized use of one's photograph for advertising purposes, would lie. We commented on that decision at the time it was